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FILED/ACCEPTED

FEB - 8 2007

Federal Communications Commission
Office of the Secretary

February 8, 2007

VIA MESSENGER

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Re: *Arkansas Cable Telecommunications Ass'n, et al. v. Entergy Arkansas, Inc.*, EB Docket
No. 06-53, EB-05-MD-004; Opposition to Complainants' Interlocutory Request;
Opposition to Motion for Authorization to File Reply Brief

Dear Ms. Dortch:

Enclosed for filing please find the original and six (6) copies of the following submissions by
Entergy Arkansas, Inc. ("EAI") in the above-referenced docket:

- Opposition to Complainants' Interlocutory Request
- Opposition to Motion for Authorization to File Reply Brief

In addition, we request that you **date-stamp the additional copy of each of the two (2) submissions described above** and return them with the messenger.

Thank you for your assistance in this matter. Should you have any questions, please do not
hesitate to contact the undersigned.

Very truly yours,



Shirley S. Fujimoto

Enclosures

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List A B C D E

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

**FILED/ACCEPTED
FEB - 8 2007**

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Arkansas Cable Telecommunications Association; Comcast of Arkansas, Inc.;)	EB Docket No. 06-53
Buford Communications I. L.P. d/b/a)	
Alliance Communications Network;)	
WEHCO Video, Inc.; and TCA Cable)	EB-05-MD-004
Partners d/b/a Cox Communications,)	
)	
<i>Complainants,</i>)	
)	
v.)	
)	
Entergy Arkansas, Inc.,)	
)	
<i>Respondent.</i>)	
)	

To: Office of the Secretary
Attn: The Honorable Arthur I. Steinberg
Administrative Law Judge

OPPOSITION TO MOTION FOR AUTHORIZATION TO FILE REPLY BRIEF

Pursuant to Section 1.294(a) of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.291, Respondent Entergy Arkansas, Inc. ("EAI") hereby submits its Opposition to Complainants' Motion for Authorization to File a Reply Brief regarding EAI's Response to Complainants' Motion to Compel ("Motion for Authorization").

As set forth herein, the filing of a reply brief regarding a motion to compel, such as the one proffered by Complainants, is explicitly prohibited by the Commission's specific hearing rules on motions to compel. *See* 47 C.F.R. § 1.323(c). Unlike the Commission's rules on other interlocutory requests in hearing proceedings, 47 C.F.R. §§ 1.291 – 1.298, the rule on motions to

compel does not grant the Presiding Officer the discretion to accept additional pleadings once a response to a motion to compel has been filed. 47 C.F.R. § 1.323(c). Thus, the Administrative Law Judge (“ALJ”) does not have the authority to authorize, request, or consider Complainants’ Reply to EAI’s Response to Complainants’ Motion to Compel, and Complainants’ Motion for Authorization must therefore be denied and their proffered Reply Brief excluded from the record and from consideration in this proceeding.

I. PROCEDURAL BACKGROUND

On January 25, 2007, Complainants filed a Motion to Compel Production of Documents and Answers to Interrogatories, and subsequently filed an Amended Motion to Compel on January 26, 2007 (collectively, “Motion to Compel”). Pursuant to Section 1.323(c) of the Commission’s Rules, 47 C.F.R. § 1.323(c), EAI timely filed its Response to Complainants’ Motion to Compel on February 1, 2007. On February 7, 2007, Complainants filed a Reply to EAI’s Response to the Motion to Compel (“Reply Brief”), and concurrently filed their Motion for Authorization to File the Reply Brief. Complainants’ filings of February 7, 2007, are the subject of the instant Opposition.

II. THE COMMISSION’S RULES EXPLICITLY PROHIBIT THE SUBMISSION OR CONSIDERATION OF COMPLAINANTS’ REPLY BRIEF

As an initial matter, EAI must address Complainants’ oft-repeated contention that they may file replies in this hearing proceeding “as of right under 47 C.F.R. § 1.45.” (Motion for Authorization at 2). The rule upon which Complainants rely is a rule of general applicability, as the rule itself makes clear in its first clause: “Except as otherwise provided in this chapter. . .”. 47 C.F.R. § 1.45. Thus, by its own terms, Rule 1.45 does not apply to pleadings filed in hearing proceedings, which are specifically governed by Sections 1.201 – 1.364 of the Commission’s Rules, 47 C.F.R. §§ 1.201 – 1.364. To the extent Complainants remain unclear as to whether

their pleadings in this hearing proceeding are subject to the Commission's hearing rules, they are urged to consult the Hearing Designation Order ("HDO").¹

In their Motion for Authorization, Complainants cite to Section 1.294(d) of the Commission's Rules to request authorization from the ALJ to file a Reply Brief to EAI's Response to Complainants' Motion to Compel. However, motions to compel are not governed by Sections 1.291 – 1.298 of the Commission's Rules, which address interlocutory pleadings in general, but by the provisions of Section 1.323(c) of the Commission's Rules, 47 C.F.R. § 1.323(c), which specifically applies to motions to compel and related pleadings.

Section 1.323(c) states that a response to a motion to compel may be filed in seven days and explicitly states that, after a response has been filed, "Additional pleadings should *not* be submitted and will *not* be considered." 47 C.F.R. § 1.323(c) (emphasis added). Unlike the Commission's rules on other interlocutory requests in hearing proceedings, 47 C.F.R. §§ 1.291 – 1.298, the rule on motions to compel does not grant the Presiding Officer the discretion to accept additional pleadings once a response to a motion to compel has been filed. *See* 47 C.F.R. § 1.323. Thus, the ALJ does not have the authority to authorize, request, or consider Complainants' Reply to EAI's Response to Complainants' Motion to Compel, regardless of what arguments Complainants may advance. Accordingly, Complainants' Motion for Authorization

¹ *Arkansas Cable Telecommunications Association, et al., v. Entergy Arkansas, Inc.*, EB Docket No. 06-53, File No. EB-05-MD-004, Hearing Designation Order, DA 06-494 (rel. March 2, 2006) ("HDO"), ¶¶ 19, 27 (ordering that this hearing be governed by the rules of practice and procedure pertaining to the Commission's Hearing Proceedings, 47 C.F.R. §§ 1.201 – 1.364). Accordingly, the provisions of Section 1.45 of the Commission's Rules, upon which Complainants rely, are irrelevant to this proceeding. In the interest of promoting efficiency in future pleadings in this proceeding, EAI recommends that the ALJ include a statement specifically clarifying this point in any Order that may be issued on this or other pleadings in this proceeding.

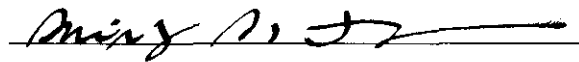
must be denied and their proffered Reply Brief excluded from the record and from consideration in this proceeding.

In the event Complainants' Motion is nevertheless granted, EAI respectfully requests authorization to submit a response to Complainants' Reply Brief. Allowing Complainants to file their Reply Brief would not only undermine the Commission's procedural rules, but would cause substantial and unfair prejudice to EAI by denying EAI the opportunity to respond – as would be its right under Section 1.323(c) – to allegations and arguments that should properly have been presented in Complainants' initial Motion to Compel. If Complainants' Motion were to be granted, the interests of equity would thus require that a response from EAI be accepted.

WHEREFORE, THE PREMISES CONSIDERED, Entergy Arkansas, Inc.

respectfully requests that Complainants' Motion for Authorization to File a Reply Brief be denied and that Complainants' Reply Brief be excluded from the record and from consideration in this proceeding, and that that the Administrative Law Judge grant EAI all other appropriate relief consistent with the views expressed herein.

Respectfully submitted,



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Dated: February 8, 2007

CERTIFICATE OF SERVICE

I, David D. Rines, do hereby certify that on this 4th day of February 2007, a single copy (unless otherwise noted) of the foregoing "Opposition to Motion for Authorization to File Reply Brief" was delivered to the following by the method indicated:

Marlene H. Dortch (hand delivery) **(ORIGINAL PLUS 6 COPIES)**

Secretary

Federal Communications Commission

445 12th Street, S.W., Room TW-A325

Washington, D.C. 20554

Hon. Arthur I. Steinberg (overnight delivery, fax, e-mail)

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